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EXAMINER

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3679

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/773,275
Filing Date: February 09, 2004
Appellant(s): SIEBERER, FRANZ

MAILED

NOV 02 2006

GROUP 3600

Kenneth W. Fields
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 17, 2006 appealing from the Office action mailed August 23, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct. The answer sets forth a NEW GROUND OF REJECTION.

WITHDRAWN REJECTIONS

The following ground of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection under 35 USC 102 of claim 6 as being anticipated by Markus, EP-694460, has been withdrawn by the examiner.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|-----------------|----------------|--------|
| EP 694,460 A1 * | Markus | 1-1996 |
| US 4,943,181 | Murphy | 7-1990 |
| US 3,789,638 | Roberts et al. | 2-1974 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

Claims 1-5, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Markus, European patent, EP-694,460.

Regarding claim 1, the European patent discloses, in Figures 3a-3c, a transport securing arrangement comprising a locking device **11** and an additional securing hook **10**. The locking device **11** is arranged in relation to the securing hook **10** in such a way that release of the locking device **11** leads to release of the securing hook from an anchorage position.

* English translation provided as an attachment at the end of the Examiner's answer.

Appellant should note that the locking device **11** and the securing hook **10** are arranged such that the locking device **11** and the securing hook **10** are able to operate to act on a side extension arm **1**.

Regarding claim 2, the securing hook **10** is pivotably supported.

Regarding claim 3, the arrangement further comprises a spring, which urges the securing hook **10** into an anchorage position. Note, the spring is not shown; however page 2, column 1 in line 39 the German word "Federwirkung" translates to "spring action"; thus, there must be a spring which urges the securing hook into the anchorage position.

Regarding claim 4, the locking device **11** is rotatably supported.

Regarding claim 5, the locking device **11** is able to be released by rotation of the locking device **11**.

Regarding claim 8, the arrangement further comprises a spring. Note, the spring is not shown; however page 2, column 1 in line 39 the German word "Federwirkung" translates to "spring action"; thus, there must be a spring. The locking device is urged in the direction of a locking position by the spring

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Regarding claim 9, the locking device **11** includes an eccentrically shaped portion (the outer edge curved portion), and the securing hook **10** partially bears against the eccentrically shaped portion **10** of the locking device **11**.

Claims 1, 4, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Murphy, 4,943,181.

Regarding claim 1, Murphy discloses, in Figures 2 and 3, a transport securing arrangement comprising a locking device **15** and an a securing hook **13**. The locking device **15** is arranged in relation to the securing hook **13** in such a way that release of the locking device **15** leads to release of the securing hook from an anchorage position.

Appellant should note that the locking device **15** and the securing hook **13** are arranged such that the locking device **15** and the securing hook **13** are able to operate to act on a side extension arm **11**.

Regarding claim 4, the locking device **15** is rotatably supported.

Regarding claim 7, the arrangement further comprises a pin **27b**. The locking device **15** has at least one guide surface **28a,28b** extending in an inclined manner relative to a longitudinal centerline of the locking device **15**. Upon rotation of the locking device **15**, the guide surface **28a,28b** slides along a pin **27b**.

NEW GROUNDS OF REJECTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Markus, European patent, EP-694,460, in view of Roberts et al., 3,789,638.

Regarding claim 6, Markus, as discussed, discloses the locking device **11** is able to be released upon rotation of the locking device **11**; however, the reference is silent as to whether the release of the locking device is independent of a direction of rotation of the locking device **11**. Roberts et al. teach, in Figure 1, releasing a locking device **14** being independent of a direction of rotation of the locking device **14** so that a user can turn the locking device either clockwise or counterclockwise thus releasing the locking device in either turning direction (see Abstract). Therefore, as taught by Roberts et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to release the locking device independently of a direction of rotation of the

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locking device so that either turning the device clockwise or counterclockwise the locking device becomes released.

(10) Response to Argument

Claim 1 - Markus

Appellant argues that Markus '460 fails to disclose a locking device and a securing hook arranged such that both the locking device and the securing hook are operable to act on the side extension arm. In response, appellant should note that the extension arm is not claimed and thus is merely recited inferentially to be used with the locking device and the securing hook, i.e., the features being claimed. Accordingly, claim 1 recites no interaction with the extension arm. The rejection could have been obviated by positively reciting the extension arm as part of the transport securing arrangement and positively interacting the locking device and the securing hook with the extension arm. In any case, the examiner has taken the position that the language "operable to act on the side extension arm" is very broad that both the securing hook and the locking device are operable to act on the extension arm 1, the beam 2, or the features 3, 4, and 12, alternatively. Appellant even admits on page 4, lines 1-2 of the appeal, that the same language merely recites a functional limitation. In response, it should be noted that patentability is based on the structural differences between the claimed structural features and the prior art and not for the intended use of the device. The device of Markus '460 is operable to "act on" the side extension arm 1 in that by

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operating the locking device 11 and the securing hook 10, the side extension arm is "acted on" thus enabling retraction or extension of the side extension arm.

Claim 6

Appellant's argument regarding claim 6 is convincing; however, note the new grounds of rejection.

Claim 1 - Murphy

Appellant argues that the tool attachment 14 is what corresponds to the "side extension arm" and thus both the locking device and the securing hook are not operable to act on the side extension arm 14. In response, this analysis is incorrect because the examiner has not considered the tooling attachment 14 being the "side extension arm" but rather feature 11 as a whole containing walls 33a and 33b. Therefore, the locking device and the securing hook are operable to act on the side extension arm 11, instead. Further, it should be noted that the claim recitation "for a side extension arm of a vehicle" in claim 1, line 1, is a functional recitation of intended use. Patentability must be based on the structural features of the transport securing arrangement which is anticipated by the prior art.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).


Extensions of time under 37 CFR 1.136(a) are not applicable to the **TWO MONTH** time period set forth above. See 37 CFR 1.136(b) for extensions of time to

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reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

Ernesto Garcia



A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

Donald T. Hajec

Conferees:

Darnell M. Jayne

Daniel P. Stodola *DPS*



DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Attachment: English translation of European patent, EP-694460 A1

PTO 06-1880

European Patent
Document No. EP 0 694 460 A1

BRACING MECHANISM FOR A TRUCK
[Abstuetzeinrichtung fuer ein Lastfahrzeug]

Markus Enzinger

UNITED STATES PATENT AND TRADEMARK OFFICE
Washington, D.C. February 2006

Translated by: Schreiber Translations, Inc.

Country : Europe, based on an Austrian
patent application

Document No. : EP 0 694 460 A1

Document Type : Publication of application with
search report

Language : German

Inventor : Markus Enzinger

Applicant : Palfinger Inc., Bergheim/Salzburg,
Austria

IPC : B 60 S 9/10

Application Date : June 24, 1995

Publication Date : January 31, 1996

Foreign Language Title : Abstuetzeinrichtung fuer ein
Lastfahrzeug

English Title : **BRACING MECHANISM FOR A TRUCK**

Bracing Mechanism for a Truck

A bracing mechanism for a truck, in which pillars (6) that can be pulled downward from horizontally running beams (1) are arranged, where each beam (1) is pulled out of the housing (2) beyond a lateral limit of the vehicle in the functional condition and is inserted during travel into the housing (2) and locked in this condition, wherein an indicator (lever 3) is connected to the beam (1), which projects outwardly (signal position) beyond the end of the beam (1) when the beam is not locked inside the housing (2).

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Specification

The invention concerns a bracing mechanism for a truck, in which pillars that can be pulled downward from horizontally running beams are arranged, where each beam is pulled out of the housing beyond a lateral limit of the vehicle in the functional condition and is inserted during travel into the housing and locked in this condition.

If it is forgotten to lock the beam in the housing or the lock becomes loose, it is possible that the beam may be pulled out of the housing due to centrifugal forces when taking a

¹ Numbers in the margin indicate pagination in the foreign text.

curve. If this is not noticed immediately, it can lead to dangerous accidents.

In order to prevent the described disadvantage, it is provided pursuant to the invention to connect an indicator to the beam, which projects outwardly beyond the end of the beam (signal position) when the beam is not locked inside the housing.

Since the indicator projects laterally, it can be seen by the driver in the rearview mirror, so that is practical to call the attention of the driver by means of a noticeable configuration of the indicator. Because the indicator can thus be seen in the rearview mirror, it is not necessary to provide a monitoring of the locking condition by means of sensors and a transmission of corresponding information via electrical lines to the driver's cab.

A simple constructive configuration of the invention is possible if the indicator is configured as a lever, which when pivoted causes or releases the locking between the beam and the housing. It should be ensured herein that the lever is located in the signal position only when the beam is not locked with the housing. This could occur, for example, because the lever is constantly loaded in the direction of the signal position by means of a spring, and when it is pivoted upward against the

effect of the spring, it can be locked in the upper ineffective position by means of a lock that connects the beam and the housing.

Due to constructive reasons, it can be practical, however, to realize the locking between the beam and the housing, on the one hand, and the fixation of the lever in the signal position, on the other hand, by means of different elements. This is shown in addition based on an exemplary embodiment with reference to the drawings.

Fig. 1 shows the view of a loading crane together with the bracing mechanism seen from the longitudinal direction of the vehicle, Figs. 2a-2c show the locking of the beam and the housing in three motion positions, Figs. 3a-3c correspond to Figs. 2a-2c seen in the direction of the arrow III of Fig. 4. In Fig. 4 is shown a view from above corresponding to the situation in Figs. 2c and 3c.

As can be seen in Fig. 1, a housing 2, which runs transversely to the direction of the truck (which is not shown) is located on the bottom of a loading crane 7, to which connect pillars 6 on both sides while the truck is being driven. These pillars 6 can also be pivoted upward, but it is essential that they do not project outward beyond the profile of the vehicle. In the operating condition of the loading crane, the pillars 6,

as can also be seen in Fig. 1, are located at a distance from the housing 2, which is caused by pulling out the beam 1. The pillars 6 have a telescope-like design and can be pulled out until they securely brace the crane on the ground and the forces that are transferred via the load into the crane are thus directed away from the vehicle.

In Figs. 2a-2c can be seen the locking of the beam 1 and the housing 2. It occurs in that the bracket-shaped lever 3, which is pivotally mounted on the beam 1, engages with a claw 4 in a peg 5, which is arranged on the side of the housing 2. In order to open the lock, the bracket 3 is pivoted into the position according to Fig. 2b, where the beam already moves outward due to the claw shape. Fig. 2c shows the beam 1 and the housing 2 already separated from each other. In this position, an air spring 8 can also be seen, which acts via a lever 9 on the bracket 3. The system of levers 8, 9 has a dead point, so that the air spring 8 retains the bracket 3, on the one hand, in the position according to Fig. 2a, and on the other hand, in the position according to Fig. 2c. The bracket 3 is painted in bright signal red color, so that it is visible to the driver in its position according to Fig. 2b or Fig. 2c.

Figs. 3a-3c show a possibility for preventing the bracket 3 from pivoting into the ineffective upper position, without

causing at the same time a locking of the beam 1 and the housing 2. The bracket 3 and the beam 1 are for this purpose permanently locked in the lower (signal) position by means of a locking element 11 and the latching notch 10 provided on the lever 3. Only if the beam 1 has come so close to the housing 2 that the claw 4 lies in front of the peg 5 does the release part 12, which is mounted on the housing 2, open the latch 10, 11 (see Fig. 3b) and keeps the same constantly open (see Fig. 3a) if the peg 5 is grasped by the claw 4.

Patent Claims

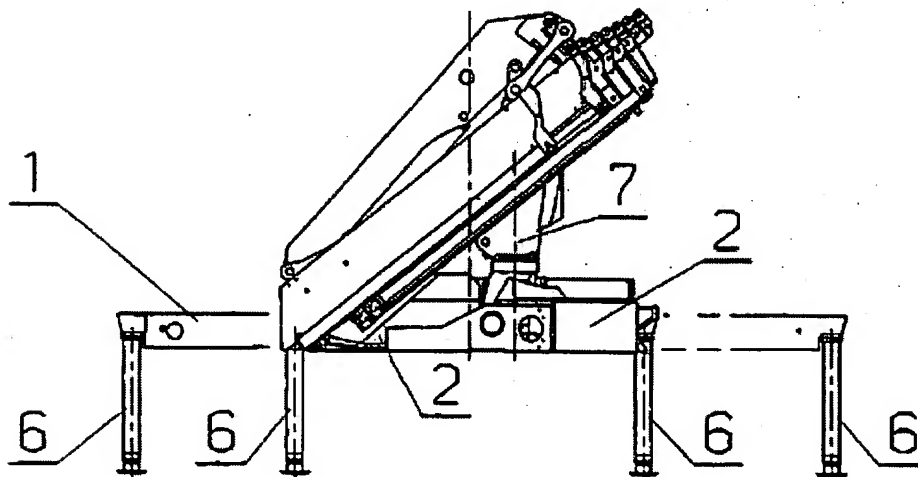
1. A bracing mechanism for a truck, in which pillars (6) that can be pulled downward from horizontally running beams are arranged, where each beam is pulled out of the housing beyond a lateral limit of the vehicle in the functional condition and is inserted during travel into the housing and locked in this condition, wherein an indicator is connected to the beam (1), which projects outwardly (signal position) beyond the end of the beam (1) when the beam is not locked inside the housing (2).

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2. The bracing mechanism of claim 1, wherein the indicator is configured as a lever (3), which when pivoted causes or releases the locking between the beam and the housing.

3. The bracing mechanism of claim 2, wherein a claw (4), which grasps a peg (5) at the housing (2) and is arranged on the lever (3), serves for producing a locking between the beam (1) and the housing (2).
4. The bracing mechanism of claim 2 or 3, wherein the lever (3) is spring loaded.
5. The bracing mechanism of one of the claims 2 to 4, wherein the lever (3) is fixed in the signal position by means of a latching element (11), which is released in the position of the beam (1) that makes possible the locking of the beam (1) and the housing (2) by means of a release part that is arranged on the housing (2).

Fig.1



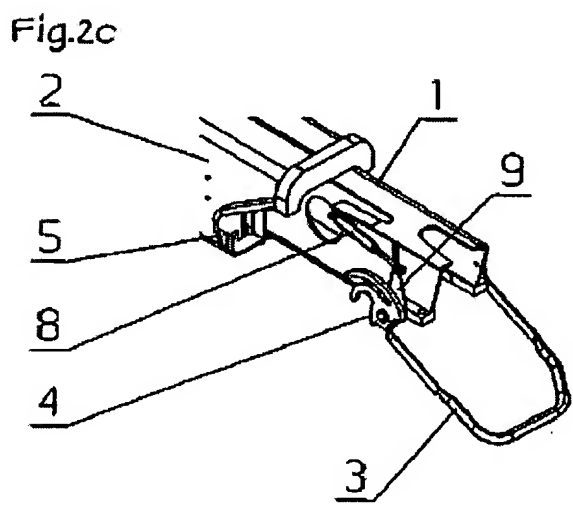
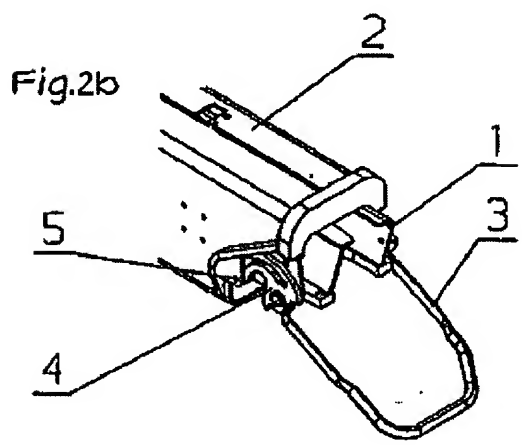
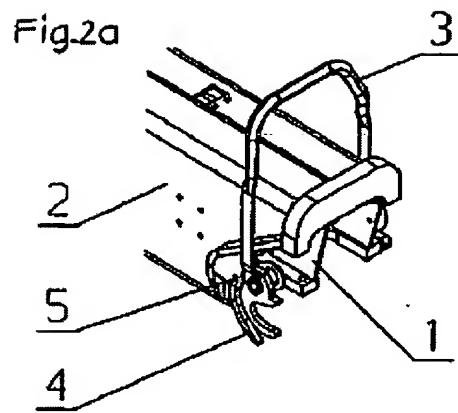


Fig.3a

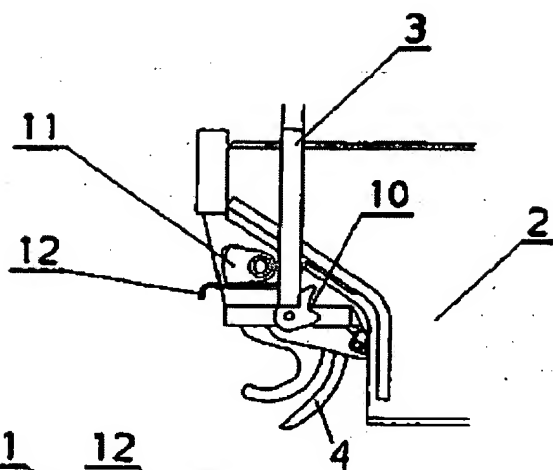


Fig.3b

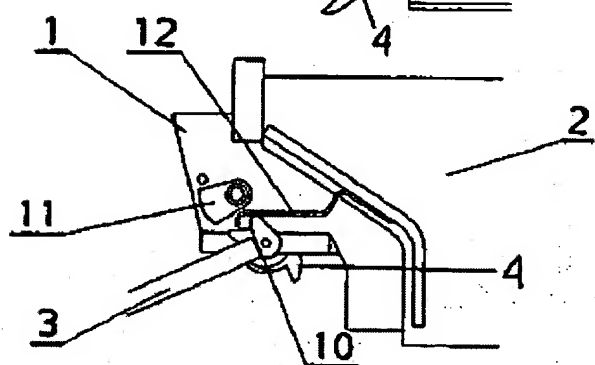


Fig.3c

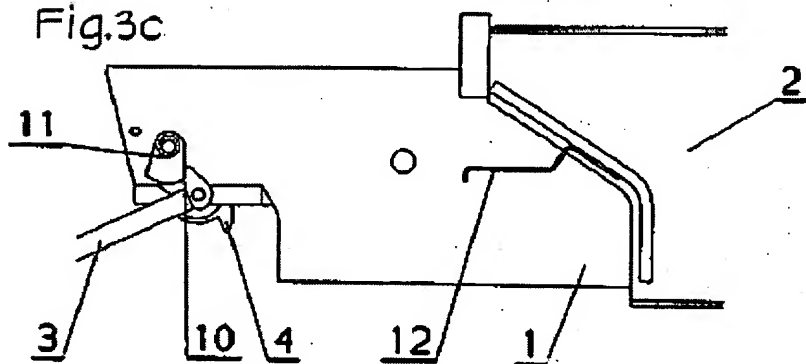


Fig.4

